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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XD121

Criteria to Assist the Assistant Administrator in Determining if an Observer Program is Qualified and Authorized

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments.

SUMMARY: NMFS requests comments on criteria to determine if observers participating in observer programs are qualified and authorized to certify that no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught and, if applicable, that no purse seine net was intentionally deployed on or used to encircle dolphins during the fishing trip in which the tuna were caught. The criteria are intended to assist the Assistant Administrator for Fisheries when making a determination of whether an observer program is “qualified and authorized” for purposes of the dolphin-safe labeling program under the Dolphin Protection Consumer Information Act.

DATES: Written comments must be received on or before [Insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Written comments may be sent by any of the following methods:

- Email to the following address: nmfs.observer.criteria@noaa.gov.

- Mail or hand deliver to Bill Jacobson, National Marine Fisheries Service, 501 West Ocean Boulevard, Suite 4200, Long Beach, California 90802. Mark the outside of the envelope “Public Comment on Observer Criteria.”

FOR FURTHER INFORMATION CONTACT: Bill Jacobson by phone at (562) 980-4035.

SUPPLEMENTARY INFORMATION:

On July 9, 2013, NMFS published a final rule under the Dolphin Protection Consumer Information Act titled “Enhanced Document Requirements to Support Use of the Dolphin Safe Label on Tuna Products” (78 FR 40997) that amended regulations at 50 CFR part 216, subpart H. Sections 216.91(a)(2)(iii)(B) and (a)(4)(ii) authorize the Assistant Administrator for Fisheries to determine if observers participating in observer programs using any gear type in any ocean are qualified and authorized to certify that no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught and, if applicable, that no purse seine net was intentionally deployed on or used to encircle dolphins during the fishing trip in which the tuna were caught. That determination triggers a requirement that when an observer from the qualified and authorized program is on board a vessel that harvests tuna during a fishing trip, such tuna would require a certification executed by the observer or by an authorized representative of the nation participating in the observer program in order to be used in tuna products labeled "dolphin safe." This certification would be in addition to the requirement that tuna used in tuna products labeled “dolphin safe,” be accompanied by a written statement executed by the Captain of the harvesting vessel (codified in § 216.91(a)(2)(ii), (a)(2)(iii)(A) and (a)(4)(i)).

NMFS anticipates that qualified observers will have undergone training programs that include such topics as recognizing an intentional set, dolphin species identification, recognizing

dolphin mortality and how to collect the information needed for determining a serious injury.

NMFS acknowledges that these skills are complex. NMFS will determine an observer program is “qualified and authorized” based on a rigorous scrutiny of the observer program’s training programs and a finding that the observers or a designated program representative is capable of making the requisite determinations.

Using the criteria, the Assistant Administrator for Fisheries will determine which observer programs are qualified and authorized and will announce such determinations in the Federal Register and also on the NMFS West Coast Region website at <http://www.westcoast.fisheries.noaa.gov>. Only tuna used in tuna products labeled dolphin-safe and harvested on fishing trips that began after the date of a determination would be subject to the new requirement for an observer certification, and only for fishing trips on which an observer is on board the vessel.

In this notice, NMFS requests public input on criteria to assist the Assistant

Administrator in making a determination of whether an observer program is “qualified and authorized.” After consideration of public comments, NMFS will publish the final criteria in the Federal Register.

Dated: February 18, 2014.

Rodney R. McInnis,
Acting Director, Office of International Affairs,
National Marine Fisheries Service.

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